

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

THE STATE OF NEW MEXICO,

Plaintiff,

v.

DEPARTMENT OF THE INTERIOR *et al.*,

Defendants.

No. 14cv695-JAP-SCY

MOTION FOR PRELIMINARY
INJUNCTION TO STAY
ADMINISTRATIVE PROCEEDINGS

Expedited Review Requested

The State of New Mexico (“State” or “New Mexico”) files this motion and supporting memorandum for a preliminary injunction to stay the Secretary of the Interior’s (“Secretary”) application of regulations under 25 C.F.R. Part 291 (“Part 291”) to the State to establish procedures to govern class III gaming by the Pueblo of Pojoaque (“Pueblo”) in lieu of the tribal-state gaming compact required by the Indian Gaming Regulatory Act (“IGRA”), 25 U.S.C. § 2710(d). FED. R. CIV. P. 65. As the Fifth Circuit Court of Appeals has already held, the Secretary’s application of Part 291 regulations to establish “Secretarial Procedures,” instead of the tribal-state compact IGRA requires, violates the plain language of the Act, and her application of Part 291 regulations exceeds the authority Congress granted the Secretary. *See Texas v. United States*, 497 F.3d 491 (5th Cir. 2007).

By allowing the Pueblo to circumvent IGRA’s tribal-state compact requirement through the Part 291 regulations, the Secretary is causing ongoing harm to the State’s dignitary interests, has denied the State the right to negotiate with the Pueblo in its sovereign capacity, and is undermining the State’s negotiating position with the Pueblo and other tribes. A preliminary injunction staying the Secretary from applying Part 291 regulations is necessary to prevent further injury to the State, which now must choose between participating in the Secretary’s illegal process or foregoing its right to influence the Procedures the Secretary has indicated she will impose on the State.

Despite the fact that the Pueblo's current tribal-state compact is not set to expire until June 30, 2015, and the Secretary's acknowledgment that Secretarial Procedures can be promulgated in less than six months, *see* Ex. 1, the Secretary has only agreed to stay application of the Part 291 regulations until September 16, 2014. The State has made best efforts to negotiate a reasonable schedule for resolving this motion, but the Secretary has insisted that the State either participate in her illegal proceedings by September 16 or lose its opportunity to do so. The State therefore respectfully requests that the Court resolve this motion on an expedited basis to avoid further irreparable harm to the State's dignitary interests.

Date: August 27, 2014

Respectfully submitted,

By: /s/ Jessica M. Hernandez
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Counsel of record were served via CM/ECF on August 27, 2014.

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